

Service Date: July 27, 1993

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER Of the Application of)	TRANSPORTATION DIVISION
MICHAEL R. DUGAN DBA ABC CAB)	
COMPANY, Libby, Montana for a)	DOCKET NO. T-93.27.PCN
Montana Intrastate Certificate of)	
Public Convenience and Necessity.)	ORDER NO. 6218

FINAL ORDER

APPEARANCES

FOR THE APPLICANT:

Michael R. Dugan and John W. Hooper, dba ABC Cab Company,
P.O. Box 525, Libby, Montana 59923

FOR THE PROTESTANT:

Minnie Boothman and Linda Bricker, dba Libby Cab, 1112 Fish
Hatchery Road, Libby, Montana 59923

Jacque Christofferson, Valet Limousine, Inc., 3820 South
Third West, Missoula, Montana 59801

FOR THE COMMISSION:

Denise Peterson, Staff Attorney, Wayne Budt, Administrator
of Transportation Division, 1701 Prospect Avenue, P.O. Box
202601, Helena, Montana 59620-2601

BEFORE:

BOB ROWE, Vice Chairman and Hearing Examiner

BACKGROUND

1. On February 25, 1993 the Montana Public Service Commission (Commission) received an application from Michael R. Dugan dba ABC Cab Company (Applicant, Mr. Dugan or ABC Cab) for a Class B Certificate of Convenience and Necessity authorizing the transportation of passengers and luggage within the cities of Libby, Eureka and Troy, Montana and a 150 mile radius. The applied for service area was amended to Lincoln and Sanders Counties.

2. Valet Limousine, Inc., Missoula, Montana; Minnie Boothman and Robert E. Lee, dba Libby Cab, Libby, Montana; and Pixley Transportation, Inc., Gillette, Wyoming, filed protests to the application. Valet Limousine withdrew its protest at the hearing, pursuant to a stipulation that ABC Cab would limit limousine service from its proposed authority. Pixley Transportation withdrew its protest upon the agreed limitation that transportation of rail crews is prohibited. There were also two letters filed by patrons of Libby Cab Company concerned about the effect of competition on Libby Cab Company and attesting to its good service.

3. The Commission held a duly noticed public hearing on May 25, 1993 in the County Annex Building, 418 Mineral Avenue, Libby, Montana, commencing at 9:00 a.m.

4. At the conclusion of the hearing parties stipulated to a final order.

SUMMARY OF TESTIMONY

Applicant's Testimony

5. John W. Hooper, partner in ABC Cab Company, appeared and testified in support of the application. He offered a public opinion survey with 504 signatures favoring ABC Cab Company. He also offered the numerous affidavits in support of the proposed authority which were filed with the application. In addition, Mr. Hooper offered a letter on the condition of the vehicles from the Commission's enforcement officer Bob Charles; a letter of support from the Libby Chamber of Commerce; a letter from someone who works for the regional supervisor of the Forest Service; and a letter from a witness present at the hearing. After his testimony the Hearing Examiner admitted into the record the opinion survey and the letter from the Chamber of Commerce for the limited purpose of showing community support, and did not admit the others.

6. Mr. Hooper also sponsored and offered into evidence Applicant's Exhibit 5, 13 pictures of a 1980 Mercury Zephyr he took on or about February 28, 1993 when he worked for Libby Cab Company. In his opinion the pictures of the cab in service demonstrated fitness, safety and sanitary violations. He took the pictures upon returning from an absence and testified that the pictures represented the condition of the vehicles without any alteration. Picture # 1 shows the cargo area in the back of a station wagon. A dirty spare tire is in the open with trash, a jack, various rusted pieces of the car, license plates, a gallon of oil or antifreeze, all where passengers' cargo would go. The sides of the interior are cracked and peeling.

7. Picture # 2 shows the front of the vehicle with peeling paint and rusting on the hood. In Picture ## 3 and 7, taken of the engine, according to Mr. Hooper's testimony one can see parts missing from the emission control system (against the law), no oil cap, and oil spilled from the oil leaks. Again, the generally poor appearance of the car is shown in Picture #4. The next two pictures show the interior of the cab, back seat (# 5) and front seat (#6). The back seat is not vacuumed, according to his testimony. Plainly visible on the floor is a tangled web of metal snow chains, wires and flares, along with a towel, a large

glass and possibly some garbage. The door handle also appears to be missing. The front seat area, also not vacuumed, has stains on the seat, trash on the console by the passenger seat, and deicer by the driver's side between the door and the floor. Mr. Hooper testified that the flammable deicer on the floor so close to the flares protruding under the seat from the rear is a safety hazard. Picture # 13 corroborates the unsightly appearance of the front seat, showing garbage and dirt.

8. Mr. Hooper testified that Picture ## 8 and 10 were supposed to show the bald tires in front, which are not visible.

Mr. Hooper testified that the front tires are unstable on ice. In Picture # 9 one can see that the backup light bulb is out, and in Picture # 11 the left turn signal is covered with red tape which is pulling off. He testified that Libby Cab Company did fix the broken tail light when told to do so by an officer. He also testified that the muffler was broken for some time and was not fixed until ticketed.

9. According to Mr. Hooper's testimony, Libby Cab Company pays its employees a percentage of what the cab makes, in violation of Department of Labor and Industry's regulations. Mr. Hooper stated that he had not wished to put Libby Cab in a bad position by filing with the Commission. He was told a violation

could result in a \$10,000 fine and did not want to financially impair the company. He testified that he was told he was laid off because they could not get insurance to cover him.

10. The vehicle that ABC Cab Company proposes to purchase will be a late '80's or early '90's model Buick or other GM vehicle. It will be yellow, have taxi lights and signs. The proposed service would run meters for accuracy and public convenience. ABC Cab will follow a regular maintenance schedule at a local detail shop and auto shop.

11. Mr. Hooper offered as Applicant's Exhibit No. 6 the financial statements of the partners. They plan to trade in a Chevy Blazer. With Mr. Dugan's good credit and the trade-in value, the payments will be low. Mr. Hooper admitted that it is hard to anticipate income, but the partners are prepared to support the business for a year. For safety, they intend to hire drivers and not do all the work themselves. They also will purchase an FCC approved radio, not like the CB radio used by Libby Cab. In his opinion, they can make a good business. He believes that the other company is not trying. He testified that Libby Cab Company failed to display its rates in violation of ARM 38.3.3305. He learned that this is a violation from research at the library. The only sign put up was "No more credit."

12. Cindy Wagner, Libby, Montana, appeared and testified in support of the application. She admitted that she is Mr. Hooper's mother-in-law. However, she was a customer of Libby Cab before, during and after her daughter's marriage, she testified.

In an average month, she uses the cab 15 days. Sometimes the cab is late. Once in awhile they pick her up in a truck. Now they have a little blue Datsun. The car is not in good condition. She would not ride if she had another mode of transportation. Once she called and the dispatcher was drunk and forget to pass the message. Another time the dispatcher said the cab would be there and it did not show up. She had to be to work at 4:00 and the cab did not show up until 5:00. In addition to the pickup truck and cab itself, Libby Cab has used a little brown Pinto, she testified. She admitted that she has not made complaints to the cab company. Under cross-examination, she testified that she always mentions she is on her way to work when she calls.

13. Gail Dugan, Libby, Montana, appeared and testified in support of the application. She is married to the Applicant Michael Dugan. She owns and operates a cleaning business. In California she ran this kind of business and also did car-detailing. If the application is approved, she will be detailing the

cab(s), she testified. She stated that she keeps her bus clean although she uses a lot of chemicals. Last summer she had seen the cab and would not let her mother-in-law ride in it when she came in on the train at 4:00 a.m.

14. Janice Wood, Libby, Montana, appeared and testified in support of the application on behalf of the Libby Chamber of Commerce. She stated that a lot of retired people are moving into the area and the proposed taxi service would be a plus. She has not used the existing cab service. Although the Chamber refers people to Libby Cab, she is uncomfortable doing so because of the appearance of the vehicles. She warns ahead of time as to the appearance of the vehicles and the fact they are not marked.

Protestants' Testimony

15. Linda Bricker, Libby, Montana, appeared and testified in opposition to the application. Ms. Bricker is part owner of Libby Cab Company, having acquired the interest from her ex-husband. She sponsored three exhibits, including her own survey, a letter from a person not present, and a letter from the insurance company. The survey contained 182 signatures. The insurance company denied coverage of John Hooper stating that he did not have seven years of commercial driving experience. The

Hearing Examiner denied admission of the letter from the person not present, admitted the letter from the insurance company, and allowed the survey to show community, not shipper, support.

16. Ms. Bricker testified that the "PSC representative" has visited many times. Libby Cab has been "up front." When there were violations they did their best to correct them. Regarding the tire chains and flares, it was winter. Unfortunately it was a quick convenient place to store them behind the driver's seat.

Usually one passenger rides up front. If an eyesore, the flares and chains are not usually in the way. It is a good idea to have flares and deicer, she added.

17. The picture shows the shabby, unclean carpet in the driver's seat, but the passenger side does look clean, she testified. The console is cluttered but clear. They fix problems as they happen, unfortunately not before, she added.

18. Under cross-examination, Ms. Bricker responded that the cab company has picked up passengers in a personal vehicle for their convenience when a cab car was out of town. They have two cabs but only one is insured. To handle the smoking odor problem, they changed the rules. Now drivers cannot smoke while passengers are in the car.

19. Ms. Bricker testified that she understood one could not

get insurance unless the loan on the vehicle was fully paid. She said that she has had a terrible time getting insurance. One month the insurance lapsed and everyone quit. To insure a taxi, drivers need to be 25, she said. When they hired John Hooper, they assumed he was old enough. Normally it is a family business and they do not hire outside. They hired Mr. Hooper because he was thinking of buying the business. They do not use employment information because they take nothing out of the checks. Employment is just temporary.

20. Ms. Bricker testified that Libby Cab was no longer using CB's. John had told them it was illegal. The "PSC officer" knew and mentioned that they should not use CB's. They would run on Channels 2 and 3. They found no one was using Channel 2 on a regular basis. Now they are getting FM; it is more efficient and legal.

21. Regarding insurance, Ms. Bricker said that Libby Cab always insures one vehicle. If it breaks down, the insurance company transfers the coverage for a day.

22. When extremely late or using their personal car, Ms. Bricker testified that they do not charge rates. They treat senior citizens and handicapped alike, charging only 50 percent. They have no records of complaints. They work 24 hour days and

get 25-50 calls per day.

23. Under cross-examination by the Applicant, Ms. Bricker responded that no one under the age of 25 is working now. She said that the muffler was bad on the car only a day or two before fixing it. Although it was noisy before, it was not dragging or a nuisance -- just the night before. She also admitted that she did not fill out W-4 income tax forms and that she had only an informal interview with Mr. Hooper.

24. Michael Leroy Johnson appeared and testified opposing the application. He said that he has seen the cab dirty, but it is not the owner's fault. It is the driver's responsibility to do the maintenance and upkeep. He used to drive a taxi, and he found that he could not make enough money working seven days a week. He left the employ of the cab three years ago. He likes Mr. Hooper, he testified, but he does not see how two cab companies can make it. A second cab company would eventually mean there would be no taxi service, he maintained.

25. Robert Clough, Libby, Montana, appeared and testified in opposition to the application. He rides the cab 20-30 times a month. The cab employees are always courteous, he testified. He believes if a second cab company came to Libby neither would survive. Although the cabs could be cleaner, he is only in the

cab five to ten minutes and is not bothered. Smoking does not bother him either. The cab is not the best but it gets back and forth, he testified.

26. Robert Boothman, Libby, Montana, testified opposing the application. He is a driver for the cab company which is owned by his wife and daughter. He testified that John Hooper was the first person under the age of 25 driving the cab. He testified that the company used the Zephyr at the time of the pictures. The day before the hearing the company purchased a 1977 Ford LTD.

Since the Zephyr the company had used a 1981 Chevy Malibu as its primary car. Mr. Boothman testified that he has been a cab driver for ten years. He handles complaints by talking to the complainants and getting along as best he can, joking it out. For example, he said, the back door does not work, so he says it is a "safety factor," that is, to be sure the cab gets its money.

27. When the calls are backed up and the cab is late, Mr. Boothman tells the passengers that it is "on the company," but they may give a donation if they wish. Mr. Boothman said that the senior citizen discount is tariffed. He testified that they take the calls in rotation, unless informed that someone has to go to work. The dispatchers are his son, daughter's husband, wife or daughter -- usually from the family. He donates time to

the employment. The company uses a certified mechanic, Mr. Boothman testified. He admitted that the Malibu, "off the streets today," never had any rear brakes and they could not use it in the winter.

28. Minnie Boothman, part-owner of Libby Cab Company, testified opposing the application. She stated that she just pays a percentage of the gross revenues, 15 percent to the dispatcher and 35 percent to the drivers. The gross income for March through May was \$5,330, with a total of \$2,665 in wages paid to dispatchers and drivers. Each driver has a dispatcher. Mrs. Boothman said that the company does not do regular bookkeeping. It does not keep employment tax information or worker's compensation information. Since it is mostly family, they cannot afford to keep worker's compensation insurance. Mrs. Boothman testified that the owner's function is putting out money for insurance and buying cars when needed.

Applicant's Rebuttal Testimony

29. Michael R. Dugan, partner in ABC Cab Company, appeared and testified in rebuttal to matters raised by Protestants. For background, he explained that he owned several janitorial services and excavating companies. He is prepared to support the cab

for a year or so. He had to support his wife's cleaning business in the beginning and now it is almost supporting itself. He stated that the town is large enough to support two taxi companies, and growing, which is why they applied in the first place.

He is able to provide insurance. Tom Wood, insurance broker, informed him that there is no age stipulation. He will have to have full coverage, so long as there is a lien. With no liens, the company would only need liability coverage.

DISCUSSION AND FINDINGS

30. Pursuant to Title 69, Chapter 12, Montana Code Annotated (MCA) the Commission supervises and regulates intrastate motor carrier service. §69-12-201, MCA. The maintenance of an adequate common carrier motor transportation system has been declared a public purpose. § 69-12-202, MCA. To obtain motor carrier operating authority requires an application to the Commission and a hearing whenever a protest is filed or a request for a hearing is received. § 69-12-321, MCA.

31. Section 69-12-323, MCA, governs the requirements for a Commission decision on whether an application should be granted.

(2) (a) If after hearing upon applica-

tion for a certificate, the commission finds from the evidence that public convenience and necessity require the authorization of the service proposed or any part thereof, as the commission shall determine, a certificate therefor shall be issued. In determining whether a certificate should be issued, the commission shall give reasonable consideration to the transportation service being furnished or that will be furnished by any railroad or other existing transportation agency and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout 12 months of the year and the effect which the proposed transportation service may have upon other forms of transportation service which are essential and indispensable to the communities to be affected by such proposed transportation service or that might be affected thereby.

32. The Commission has interpreted § 69-12-323, MCA, as requiring it to address these issues before granting an application for authority:

- a. Is the applicant fit and able to perform the proposed service?
- b. Does the public convenience and necessity require the authorization of the proposed service?
- c. Can and will existing carriers meet the public need for the proposed service?
- d. Would the proposed service have an adverse impact on existing transportation service contrary to the public interest?

33. In answering the first question (paragraph 32), the Commission finds that Applicant is fit and capable of providing the proposed service. The partners have demonstrated financial backing and business know-how. They have submitted financial documents in support of their application, along with a business organization plan. They have shown the intention and dedication to run a clean, safe, modern taxi service business. The Commission determines that Applicants have met the threshold requirement of fitness.

34. In determining public convenience and necessity, the

Commission has traditionally followed the analysis of Pan-American Bus Lines Operation, 1 M.C.C. 190 (1936).

The question, in substance, is whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines of carriers; and whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest. 1 M.C.C. at 203.

35. Following this analysis, the Commission will answer the second question in paragraph 32. The Commission finds that public convenience and necessity requires taxi service. The proposed service will serve a useful public purpose, responsive to a public demand or need. Testimony on the record shows that Libby, Montana needs taxi service. The public testimony from taxi passengers was limited, and included the mother-in-law of one of the Applicants. However, all of her complaints were corroborated by the Protestants and, to an extent, by the two passengers supporting Protestants. At best, Libby Cab Company marginally meets the public need for taxi service. The major concern of the passengers testifying in support of Libby Cab was that, with a competing taxi service Libby might lose this marginal service, and that neither would survive. All witnesses,

including the Protestants, testified to the public need for taxi service. Both Applicants and Protestants had substantial support for their respective services, as shown in the surveys admitted as community support.

36. In determining whether existing carriers can and will meet the public need for the proposed service (c., § 32), the Commission finds that the existing taxi service can and would continue to meet the public need, however marginally. In Pan-American (§ 34), the analysis of this issue allows the Commission to make a qualitative decision as to whether the existing service could meet the need as well as that proposed by the Applicants. Sadly, testimony and evidence demonstrate that Protestants have provided a low, albeit well-meaning, quality of service. They have operated unsafe vehicles with bald tires, broken mufflers and rear lights, and missing door handles, only fixing those items when directed to do so by law enforcement or out of necessity. They have shown little regard for passenger comfort or safety in the car, with garbage, dirt, and vehicular items piled up in the passenger and cargo space.

37. Libby Cab has failed to charge tariffed rates and to follow basic rate disclosure requirements in the Commission rules. Some evidence indicates that Protestants have used a

private vehicle not covered by taxi liability insurance. Even if done for the passenger's convenience, this service does not properly meet the public need and is against the law. In fact, the frequency of this occurrence indicates the need for another taxi service in town.

38. The final question in § 32 is whether the proposed service would have an adverse impact on existing transportation service. Following the analysis in Pan-American (§ 34), the answer depends upon whether the "new operation ... proposed [will not endanger or impair] the operations of existing carriers contrary to the public interest." (Emphasis added.) Regretfully, the Commission has to answer as follows. It is possible that the new taxi operation as proposed will impair the existing taxi operation (Protestants). However, it would not be contrary to the public interest to have a safe, clean, modern taxi service in Libby and the service area. With another taxi operation in the locale, Protestants may upgrade their service and keep their loyal clientele, which would be in the public interest. The Commission cannot see how the existing carrier can continue in the same mode, violating business and safety standards, and possibly legal requirements. Testimony on the record indicates that Libby (and the area) is growing and could support two taxi

operations, perhaps while Protestants come into compliance with minimal standards. The Commission determines that Applicants' proposed service, while it may impair the existing taxi service as currently operated, will not do so contrary to the public interest.

39. The Commission has no crystal ball to determine whether both operations, only one operation or neither operation will succeed. However, it would be contrary to the public interest to deny Applicants the opportunity to offer a higher quality of service on the grounds that doing so would harm the Protestants.

40. "Character of service" has been an issue in other Dockets; a factor in consideration was whether a higher quality of service was unaffordable and therefore unresponsive to the particular needs of the users in the community. See, ... L&B Busing, Inc. ..., Docket No. T-9865, Order No. 6140, §§ 24-26, December 16, 1992. "Character of service" and the price for better service is not at issue in this Docket. There has been no evidence on rates proposed by Applicants, but the Commission presumes that Applicants will file reasonable tariffs. Protestants cannot legitimately ask for donations or charge discounted, untariffed rates to compensate for low quality service in order to remain competitive. It is in the public interest to have at

least one, and hopefully two, taxi operations in Libby, Montana providing safe, reliable and reasonably priced service pursuant to law and Commission rules.

41. In conclusion, the Commission determines that the public convenience and necessity requires the proposed service. The existing carrier cannot provide the same quality of service.

If this applied for authority harms the existing transportation service, it will not do so contrary to the public interest. It is still possible that the existing service will continue to operate with its past financial success, but it will have to do so mindful of business and legal requirements. The Commission determines that the authority applied for in this Docket should be granted.

CONCLUSIONS OF LAW

42. The Montana Public Service Commission properly exercises jurisdiction over the parties and matters in this proceeding pursuant to Title 69, Chapter 12, Montana Code Annotated.

43. The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter.

44. Applicants have demonstrated a public demand or need for the proposed service and that existing carriers cannot meet

that demand or need as well.

45. Applicant has demonstrated fitness to provide the proposed service.

46. The proposed service would not have an adverse impact on existing transportation service contrary to the public interest.

ORDER

NOW THEREFORE IT IS ORDERED THAT THE APPLICATION in Docket No. T-93.27.PCN shall be GRANTED for the following authority:

Class B - Passengers, baggage and express
between all points and places in Lincoln and
Sanders Counties. Limitations: Transportation
of railway crews is prohibited. Transportation
by limousine is prohibited.

DONE AND DATED this 21st day of July, 1993 by a vote of 4-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ANDERSON, Chairman

BOB ROWE, Vice Chairman

DAVE FISHER, Commissioner

DANNY OBERG, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.